

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PABLO CARACENI FRANCIONE,

Plaintiff,

v.

SOCIAL SECURITY
ADMINISTRATION – FRESNO
DISTRICT,

Defendant.

No. 1:23-cv-00344-ADA-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION

(ECF Nos. 15, 19)

Plaintiff Pablo Caraceni Francione, proceeding pro se and in forma pauperis, filed the instant action on March 8, 2023, alleging that he was recipient of monthly social security income benefits under Title XVI of the Social Security Act, but those benefits were terminated beginning July 2022. (ECF No. 1.) Defendant Kilolo Kijakazi, Acting Commissioner of Social Security,¹ filed a motion to dismiss for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), contending that Plaintiff failed to exhaust his administrative remedies. (ECF No. 15.)

On August 7, 2023, the assigned Magistrate Judge issued findings and recommendations that recommended (1) the Commissioner's motion to dismiss for lack of subject matter jurisdiction be granted and (2) Plaintiff's claims against the Commissioner related to his Title

¹ The (Acting) Commissioner is the only proper defendant in an action for review of benefits decisions. See 42 U.S.C. § 405(g); 20 C.F.R. § 422.210 (d).

1 XVI social security income benefits be dismissed without prejudice as to Plaintiff fully
2 exhausting his administrative remedies. (ECF No. 19.) The findings and recommendations were
3 served on the parties and contained notice that any objections thereto were to be filed within
4 fourteen (14) days after service. (*Id.* at p. 7.) No objections have been filed, and the time in
5 which to do so has passed.


6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c), this Court has conducted a
7 *de novo* review of the case. Having carefully reviewed the entire file, the Court finds that the
8 findings and recommendations are supported by the record and proper analysis.

9 Accordingly,

- 10 1. The findings and recommendations issued on August 7, 2023 (ECF No. 19) are
11 adopted in full;
- 12 2. The Commissioner's motion to dismiss for lack of subject matter jurisdiction (ECF
13 No. 15) filed on June 21, 2023, is granted;
- 14 3. Plaintiff's claims against the Commissioner related to his Title XVI social security
15 income benefits are dismissed without prejudice as to Plaintiff fully exhausting his
16 administrative remedies; and
- 17 4. The Clerk of the Court is directed to close this case.

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20 IT IS SO ORDERED.

21 Dated: September 4, 2023

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UNITED STATES DISTRICT JUDGE